

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 72 of 1984

And

INCOME TAX REFERENCE No 73 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and sd/-

MR.JUSTICE M.C.PATEL sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? yes

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy
of the judgement?

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

VIKRAM MILLS LTD

Versus

COMMISSIONER OF INCOME-TAX

Appearance: In both the ITRs:

MR. MANISH J SHAH for MR JP SHAH for Petitioner

MR.P.G.DESAI with MR MANISH R BHATT for Respondent

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE M.C.PATEL

Date of decision: 24/06/98

ORAL JUDGEMENT (Per C.K.Thakkar,J.)

In I.T.Reference No.72 of 1984 the following two
questions have been framed for the opinion of this
Court:-

"1.Whether, on the facts and in the circumstances

of the case, the Appellate Tribunal was right in law in holding that the betterment charges were not deductible in computation of total income?"

"2.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that expenditure by way of bank guarantee commission is expenditure of capital nature and not deductible in computation of total income?"

In I.T. Reference No.73 of 1984 the following three questions have been framed for the opinion of this Court:-

"1.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the betterment charges were not deductible in computation of total income?"

"2.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that expenditure by way of bank guarantee commission is expenditure of capital nature and not deductible in computation of total income?"

"3.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that stamp charges paid in respect of agreement for the deferred payment basis was expenditure of capital nature?"

So far as question No.3 in I.T.Reference No.73 of 1984 is concerned, Mr.Shah, learned Advocate for the assessee, made a statement that in view of depreciation allowed to assessee in subsequent years, he does not press that question. That question, therefore, does not survive and no opinion is expressed.

So far as question No.1 in both References is concerned, it is covered by a decision of this Court in CIT (ADDL.) vs.ROHIT MILLS LTD.,104 I.T.R. 132 approved by the Hon'ble Supreme Court in ARVIND MILLS LTD. v. COMMISSIONER OF INCOME TAX,197 I.T.R.422 (SC). The question was decided in favour of revenue and against the assessee. Accordingly, the question is decided in the affirmative, i.e. against the assessee and in favour of the revenue.

On question No.2 in both the References, the authorities relied upon a decision of this Court in COMMISSIONER OF INCOME TAX, GUJARAT v. VALLABH GLASS WORKS LTD., 137 I.T.R. 389 and held that expenditure by way of bank guarantee commission for purchase of machineries on deferred payment basis is expenditure of a capital nature and is not deductible in computation of total income of the assessee. In Vallabh Glass Works Ltd. (supra), decisions in Addl.CIT v. Akkamba Textiles Ltd. 117 ITR 294 (AP) and Sivakami Mills Ltd v. CIT, 120 ITR 211 (Madras) were cited. The assessee relying upon above two decisions, contended that the view taken in the above two decisions was that expenditure by way of bank guarantee commission could not be said to be a part of expenditure of a capital nature but revenue expenditure and it was, therefore, deductible in computation of total income. The Division Bench observed that in those cases such a view was taken. It however, dissented from the said view and ultimately held that such an expenditure can be said to be expenditure of capital nature and the authorities were right in not granting deduction from total income. Accordingly, the question was decided against the assessee and in favour of revenue. A similar view was also taken by this Court in a subsequent case in COMMISSIONER OF INCOME TAX v BHARAT SURYODAYA MILLS CO.LTD., 202 ITR 942. Following VALLABH GLASS WORKS LTD., this Court held that bank guarantee commission for purchasing machinery was expenditure of a capital nature and, therefore, was not deductible from total income of the assessee.

Mr.Shah drew our attention to two decisions of the Hon'ble Supreme Court in ADDITIONAL COMMISSIONER OF INCOME TAX v. AKKAMBA TEXTILES LTD., 227 ITR 464 (SC) and COMMISSIONER OF INCOME TAX v. SIVAKAMI MILLS LTD. 227 ITR 465 (SC). In SIVAKAMI MILLS LTD., the Supreme Court referred to SIVAKAMI MILLS LTD v.CIT, 120 ITR 211 (Madras) as also ADDL.CIT v. AKKAMBA TEXTILES LTD., 117 ITR 294 (AP). The Hon'ble Supreme Court observed as under:-

"The short question that arises for our consideration in this appeal is whether the guarantee commission paid by the assessee is a revenue expenditure and hence allowable as deduction in computing the total income in the assessment year 1968-69. The High Court answered the question in favour of the assessee (see (1979) ITR 211). It was held that the guarantee commission paid by the assessee was a revenue expenditure and hence allowable as a deduction in

computing the total income. The Revenue has come in appeal.

A similar question arose before the Andhra Pradesh High Court in Addl. CIT v. Akkamba Textiles Ltd. (1979) 117 ITR 294. The Court held that the expenditure incurred is revenue in nature and so allowable as deduction. Civil Appeal No.2832 of 1977 preferred against the said decision was dismissed by this court (see (1997) 227 ITR 464). In view of the aforesaid decision we see no force in this appeal. Accordingly, this appeal is dismissed."

In VALLABH GLASS WORKS LTD., this Court dissented from the view taken by the Andhra Pradesh and Madras High Courts, but the Hon'ble Supreme Court in the above two cases dismissed the appeals filed by the revenue on the basis of the above two decisions, virtually affirming the view taken by them.

In these circumstances, in our opinion, the decision in VALLABH GLASS WORKS LTD. stands impliedly overruled to that extent. The second question in both References, therefore, must be answered in the negative, i.e. in favour of assessee and against the revenue.

References are disposed off accordingly. No order as to costs.
